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E-filed 2/9/07

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Attorneys for Plaintiff RUSSELL WYLLIE

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
DIVISION OF SAN JOSE

RUSSELL WYLLIE,

Plaintiff,

vs.

LIFE INSURANCE COMPANY OF
NORTH AMERICA, APPLE
COMPUTER, INC. LONG TERM
DISABILITY PLAN, TRUSTEE OF
THE GROUP INSURANCE TRUST
FOR EMPLOYERS IN THE
MANUFACTURING INDUSTRY
LONG TERM DISABILITY INCOME
PLAN,

Defendants.

Case No.: C 06-06922 JF HRL

**JOINT CASE MANAGEMENT
STATEMENT AND PROPOSED ORDER;
REQUEST FOR CONTINUANCE OF CASE
MANAGEMENT CONFERENCE**

Date: February 16, 2007

Time: 10:30 a.m.

I. BRIEF DESCRIPTION OF THE CASE

Russell Wyllie is a 43-year-old former Senior Technical writer for FileMaker, a subsidiary of Apple Computer. In December 2004, Mr. Wyllie alleges he became disabled as a result of repetitive strain injury, wrists and arm tendonitis, carpal tunnel syndrome, and epicondylitis. Mr. Wyllie applied for and received short-term disability benefits. Mr. Wyllie then began receiving long-term disability benefits under a long-term disability policy (the "Policy") issued by the Life Insurance Company of North America ("LINA"). LINA provided long-term disability benefits to Mr. Wyllie from December 7, 2004 through May 19, 2005. Benefits were then terminated on the basis that Mr. Wyllie was no longer disabled and could perform the duties of his own occupation. Because this case involves a dispute over Mr. Wyllie's alleged entitlement to long-term disability benefits pursuant to an employee benefit plan, this case is governed by the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), 29 U.S.C. §§ 1001, *et seq.*

II. PRINCIPAL FACTUAL ISSUES

Mr. Wyllie contends that he remains disabled under the terms of the Policy; LINA maintains that a review of medical records discloses that Mr. Wyllie is no longer disabled under the terms of the Policy.

III. PRINCIPAL LEGAL ISSUES

Mr. Wyllie maintains that he is disabled under the terms of the Policy and is eligible for further benefits. LINA maintains that Mr. Wyllie is not disabled under the terms of the Policy and not eligible for further benefits. LINA also maintains that the Policy affords discretion to LINA and the matter is to be reviewed under the abuse of discretion standard of review. Mr. Wyllie maintains that under *Abatie vs. Alta Health & Life Insurance Company*, 458 F.3d 955 (9th Cir. 2006), the sliding scale standard of review is required.

IV. OTHER FACTUAL ISSUES

None.

V. SERVICE OF PROCESS

All parties have been served and Answers filed.

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1 **VI. ADDITIONAL PARTIES**

2 No additional parties are anticipated to join the action.

3 **VII. ASSIGNMENT TO A MAGISTRATE JUDGE**

4 Not applicable.

5 **VIII. ALTERNATIVE DISPUTE RESOLUTION**

6 The parties have agreed to mediate this case before the Honorable Judge Edward A.
7 Infante (retired) at JAMS on April 18, 2007. The parties therefore request that this case
8 management conference be continued to a date three weeks post-mediation to allow the parties an
9 opportunity to settle the matter.

10 **IX. TELEPHONIC APPEARANCE REQUEST**

11 In the event the Court declines to continue the Case Management Conference until
12 sometime after the Parties' mediation on April 18, 2007, the parties jointly request pursuant to
13 Local Rule 16-10 that they be permitted to appear telephonically at the Case Management
14 Conference currently set for Friday, February 16, 2007.

15 **X. INITIAL DISCLOSURES**

16 The parties anticipate Initial Disclosures will be complete by February 28, 2007.

17 **XI. MOTION PRACTICE**

18 The parties anticipate that if the matter is not resolved in mediation, the matter will be
19 resolved through cross-motions for summary judgment. The parties will submit a Proposed
20 Motion Schedule to the Court if mediation is unsuccessful.

21 Dated: February 8, 2007

LAW OFFICES OF SILVER & TAUBE

22 By Melwyn D. Silver

23 Melwyn D. Silver
24 Attorney for Plaintiff

25 Dated: February 9, 2007

MORGAN, LEWIS & BOCKIUS LLP

26 By Donald P. Sullivan

27 Donald P. Sullivan
28 Andrew C. Sullivan
Attorneys for Defendants

[PROPOSED] CASE MANAGEMENT ORDER

The Court, having considered the Parties' Case Management Conference Statement,
continues the Case Management Conference to May 11, 2007.

Dated: 2/9/07


The Honorable Jeremy Fogel
United States District Judge

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